

APPENDIX D

TRI REPORTING CHANGES

CHANGES IN TRI REPORTING OVER THE YEARS

(from most recent to oldest changes)

Final Rule - Lead and Lead Compounds; Lowering of Reporting Thresholds

On January 13, 2001, EPA published the final rule on lowering the reporting thresholds for lead and lead compounds (66 FR 4499, 40 CFR Part 372). The rule became effective April 17, 2001, and applied to TRI reports for reporting year 2001. The reporting thresholds were lowered to 100 pounds for lead (except when contained in steel, brass and bronze alloys) and lead compounds. Under previous reporting requirements facilities had to report lead and lead compounds only if they manufactured or processed more than 25,000 pounds annually or otherwise used more than 10,000 pounds annually. Lead and lead compounds are of concern not only because they are persistent bioaccumulative toxic chemicals but also because they are especially toxic to children. Children absorb lead more readily than adults. Once exposed they can suffer from damage to the brain and central nervous system, slow growth, hyperactivity, and behavior and learning problems. Adults can suffer difficulties during pregnancy, high blood pressure, nervous disorders, and memory and concentration problems.

Chromite Ore from the Transvaal Region of South Africa delisted for 2000

On May 11, 2001 both chromite ore mined in the Transvaal Region of South Africa, and the unreacted ore component of the chromite ore processing residue (COPR) were deleted from TRI reporting requirements. Therefore, beginning with reporting year 2000 this particular chromite ore and the unreacted ore component of the COPR are no longer required to be reported under TRI.

Note that this delisting does not include any of the Cr(III) or Cr(VI) compounds that are also part of the COPR. This delisting only applies to the unreacted ore component of the COPR.

Persistent Bioaccumulative Toxic Chemicals Rule added for 2000

EPA finalized a rule on October 29, 1999 (64 FR 58666) to add several persistent bioaccumulative toxic (PBT) chemicals to the TRI reportable chemical list, and to lower the reporting thresholds for a subset of the PBTs. Additionally, this rule added the non-PBT chemical category vanadium compounds and changed the qualifier for the non-PBT chemical vanadium. The new chemicals and thresholds were first reported in reporting year 2000.

Phosphoric acid delisted for 1999

On June 27, 2000 phosphoric acid was deleted from the TRI reportable chemical list. Therefore beginning with reporting year 1999, it was no longer required to be reported under TRI.

Facility expansion

On May 1, 1997, the United States Environmental Protection Agency (USEPA) published a final rule (62 FR 23833; 40 CFR Part 372) expanding the industries required to report their toxic chemical releases and management under the EPCRA Section 313 - Toxic Release Inventory (TRI). Traditionally only the manufacturing sectors were required to file TRI reports. However, this rule expansion required seven non-manufacturing sectors to report. This regulation became effective for the 1998 calendar year activity reporting. The new industries were:

- Metal Mining (SIC 10, except 1011, 1081, and 1094)
- Coal Mining (SIC 12, except 1241)
- Electricity Utilities (SIC 4911, 4931, and 4939) - only facilities that combust coal and/or oil for the purpose of generating electricity for distribution in commerce
- Treatment, Storage, and Disposal Facilities (TSDF) (SIC 4953 - only facilities regulated under the RCRA Subtitle C, 42 U.S.C. section 6921 et seq.)
- Chemical Distributors (SIC 5169)
- Petroleum Terminals and Bulk Storage Facilities (SIC 5171)
- Solvent Recovery Facilities (SIC 7389 - only facilities primarily engaged in solvent recovery services on a contract or fee basis)

EPA expanded the TRI reporting coverage with the intention to broaden and improve the "community right-to-know" public data base and to fill information gaps relating to the use and releases and other waste management activities of toxic chemicals by the existing covered facilities. According to EPA, the industry groups being covered under the expansion rule are responsible for the manufacturing, processing, otherwise use, releases, and/or other waste management of substantial quantities of TRI chemicals, and are engaged in activities similar to or related to activities conducted by manufacturing sectors.

Chemicals removed for 1997

The two chemicals removed from the TRI chemical reporting list were:

- 2-bromo-2-nitropropane (bronopol)
- 2,6-dimethylphenol

New chemicals added for 1995

For 1995, 286 toxic chemicals and chemical categories were added to the TRI chemical list. This resulted in almost doubling the amount of listed TRI chemicals. See EPA website:

<http://www.epa.gov/tri/chemical/index.htm>

U.S. Pollution Prevention Act Rulemaking

In 1990, the Pollution Prevention Act (PPA) was passed by Congress requiring the addition of information on source reduction and toxic chemicals in waste. The change in program generated many comments (regarding definitions of waste stream, reportable recycling, and in-process recycling) from industry, environmental groups, and the public.

RECENT DEVELOPMENTS IN TRI REPORTING**Court Decision in Barrick Goldstrike Mines, Inc. v. Whitman, (Civ. Action No. 99-958(TPJ))**

On April 2, 2003, Judge Thomas P. Jackson of the District Court for the District of Columbia ruled in the Barrick Goldstrike Mines, Inc. v. Whitman, regarding the TRI reporting obligations of mining industry, by upholding EPA's interpretations of "Intra-Category Manufacture" and "Reporting on Toxic Chemicals in Tailings." The rulings were limited to the reporting of "naturally occurring" impurities and impacted on how the amount of impurity in the process stream is reported and allowed *de minimis* exemption claim on naturally occurring non-PBT chemicals present in waste rock.

Denial of Petition - Overburden Exemption

On October 10, 2001, (67 FR 63060) EPA denied the petition submitted by the National Mining Association (NMA) to modify the EPCRA Section 313 definition of "overburden" to include both consolidated and unconsolidated material. As written in the regulation, only unconsolidated material is considered as overburden under the TRI program. EPA concluded that consolidated rock includes materials that often contain toxic chemicals above negligible amounts, often in significant quantity.

EPA Response to National Mining Association (NMA) on Extraction and Beneficiation Activities

On April 23, 2001, EPA responded to a guidance request from the National Mining Association on whether extraction and beneficiation activities at mining facilities constitute the "processing" or "manufacture" of toxic chemicals in ore.

- (i) The term "manufacture" means to produce, prepare, import, or compound a toxic chemical.
- (ii) The term "process" means the preparation of a toxic chemical, after its manufacture, for distribution in commerce.

EPA responded in the letter that they intend to initiate rulemaking to adopt a revised interpretation that will allocate extraction and beneficiation activities between these two statutory terms. However, until this rulemaking is completed, EPA will not definitively resolve whether a particular activity is best characterized as "manufacturing" or as "processing." For now, individual facilities will remain responsible for determining whether their preparation of the toxic chemicals in the ore is better characterized as "manufacturing" or "processing."

Stakeholder Dialogue for the TRI Program

EPA has undertaken a stakeholder dialogue for the TRI program. Given its community focus and the broad and varied uses of the TRI data, EPA has sought input from stakeholders.

The stakeholder dialogue contains two phases. Phase 1 focuses on the program objectives of timely public release of quality data. Specifically, EPA sought comment in the following areas:

- how to improve the compliance assistance provided by the TRI program, both at Headquarters and in the Regions, to aid the reporting community;
- how to streamline the collection and processing of the 90,000+ TRI forms that EPA receives annually; and
- how well the materials, including the context, documents and tools, that EPA develops for its annual public release of the TRI data supports their use and analysis of the data.

Phase 2 of the stakeholder dialogue focuses on the program objectives of improving public understanding of the data and of the nature of facility releases. One key element is clarifying the data elements on recycling and other waste management activities required by the Pollution Prevention Act

Proposed Diisononyl Phthalate Category (DINP)

EPA proposed a rule September 5, 2000 (65 FR 53681) to add a diisononyl phthalate (DINP) category to the list of toxic chemicals subject to the reporting requirements under the Emergency Planning and Community Right-To-Know Act (EPCRA) section 313. The proposed rule is based on DINP's carcinogenicity and liver, kidney, and developmental toxicity. EPA had extended the comment period until February 2, 2001. DINP is often used as a plasticizer to provide greater flexibility and softness to the final product, but it does have other uses.